

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.**

226191

The Indiana Rail Road Company – Abandonment--
Exemption – Martin and Lawrence Counties,
Indiana

AB 295 (Sub-No. 7X)

ENTERED
Office of Proceedings
DEC 22 2009
Part of
Public Record

**MOTION FOR A PROTECTIVE ORDER
BY THE INDIANA RAIL ROAD COMPANY**

The Indiana Rail Road Company (“INRD”) moves pursuant to 49 C.F.R. §1104.14(b) for approval to file under seal a letter disclosing the names and addresses of Shippers A, B and C referred to in the Petition for an Exemption filed in this proceeding and for entry of a protective order to govern access to the confidential information.

By its Petition for Exemption filed December 7, 2009, INRD seeks exemption to abandon its line between a point east of Crane, IN and the connection of its line in Bedford, IN with CSXT’s line to Louisville, KY. The abandonment will also include the Bedford Industrial Track located in Bedford, IN. The lines to be abandoned are referred to as the “Line.”

In its Petition INRD discussed traffic on the Line. In the past three years only three persons located on the Line have used the Line for rail service. One person used the Line once for a one-time outbound carload shipment of equipment. A second person used the Line once for an inbound shipment of steel beams. The third person has used the Line in all three years to a limited degree. In order to discuss the past traffic on the Line and especially the likely future traffic on the Line INRD believed it necessary to deal with the traffic of each shipper individually.

49 U.S.C. 11904 prohibits the disclosure of shipper-specific information described in Section 11905(b) that may be used to the detriment of the shipper or consignee, or may disclose improperly to a competitor the business transactions of the shipper or consignee. 49 U.S.C. 11904(c) authorizes disclosure of such information to an officer, agent or employee of the United States government. In order to avoid disclosure of shipper-specific information that might fall within the ambit of Section 11905(b), INRD did not identify the shippers involved but referred to them as Shipper A, Shipper B and Shipper C. Separately, INRD filed a letter with the Board under seal identifying those shippers. This motion for a protective order is filed at the request of Board staff to ensure that the procedure complies with the Board's rules and that the Board has an adequate basis for protecting access to such information.

INRD respectfully requests the Board to grant its motion and to issue the attached protective order governing access to and keeping under seal the identity of the shippers referred to in the Petition. The draft Protective Order and Undertaking are similar to those recently served by the Board. *See CSX Transportation, Inc.-Trackage Rights Exemption-Birmingham Southern Railroad Company*, STB Finance Docket No. 35285 (STB served August 19, 2009); *Illinois Central Railroad Company—Trackage Rights Exemption—Grand Trunk Western Railroad Company*, STB Finance Docket No. 35241 (STB served May 8, 2009); *Chicago Central & Pacific Railroad Company—Trackage Rights Exemption—Wisconsin Central Ltd.*, STB Finance Docket No. 35242 (STB served May 8, 2009); and *Grand Trunk Western Railroad Company—Trackage Rights Exemption—Wisconsin Central Ltd.*, STB Finance Docket No. 35243 (STB served May 8, 2009).

Respectfully submitted,

THE INDIANA RAIL ROAD COMPANY

By: /S/¹
One of its attorneys

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¹ Document filed electronically

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order, "Confidential Information" means the unredacted letter dated December 4, 2009 submitted to the Board by The Indiana Rail Road Company ("INRD") identifying by name and address the shippers referred to in INRD's Petition for Exemption in AB 295 (Sub-No. 7X) as Shippers A, B and C.

2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to INRD of the attached Undertaking. Confidential Information shall be used solely for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial, or competitive purpose.

3. Confidential Information shall not be disclosed in any way or to any person without the written consent of INRD or an order of the Board, solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms by executing the attached Undertaking prior to receiving access to this information.

4. Any documents containing Confidential Information must be destroyed, and notice of such destruction must be served on INRD at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes first.

5. If the Board retains the Confidential Information, it shall, in order to keep it confidential, treat the information in accordance with the procedure set forth at 49 CFR 1104.14.

6. If any party intends to use Confidential Information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any documents setting forth or revealing such Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at the hearing during discussion of such Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Confidential Information in accordance with the Protective Order.

7. A person must file simultaneously a public version of any confidential submission it files with the Board.

8. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

UNDERTAKING

CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order governing the filing of Confidential Information by The Indiana Rail Road Company ("INRD") in STB Abandonment Docket AB 295 (Sub-No. 7X), understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Abandonment Docket AB 295 (Sub-No. 7X) or any judicial review proceeding taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this Protective Order and has not executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that INRD shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____

Position: _____

Affiliation: _____

Dated: _____